IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

Crl.MC.No. 840 of 2006()

ST.1145/2005 OF SPECIAL JUDICIAL FIRST CLASS MAGISTRATE VI (MARAD CASES), KOZHIKODE.

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PETITIONER: ACCUSED

DR. NIKITA MOHANDAS, D/O. MANIVELU,
DEVIPRIYA, P.O.EDAKKAD, KOZHIKODE-5.

BY ADV. SRI.MOHANAN V.T.K.

RESPONDENTS: COMPLAINANT

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1. SRI. K.U.GEEVARGHESE, KALAPURAKKAL,
2/2003 A, CHALIKKARA ROAD, P.O. CIVIL STATION,
KOZHIKODE-20.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.SUNNY MATHEW
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.840 of 2006

Dated this the 1st day of December 2006

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The matter has reached the stage of defence evidence. The petitioner had filed an application under Section 315 Cr.P.C to examine herself. That petition was allowed as per order dated 27/2/2006. Another application to summon a witness was dismissed by the learned Magistrate as per order in CMP No.1227/06 dated 15/03/2006. Thereafter, the matter stood posted for judgment. It is at that stage, the petitioner has rushed to this court with this Crl.M.C.

2. What is the grievance of the petitioner? The learned counsel for the petitioner submits that the petitioner may be given an opportunity to examine herself as a witness as already permitted under Section 315 Cr.P.C. Though the petition was allowed, the petitioner did not get an effective opportunity to examine herself. The only other request made is that the order passed in CMP No.1227/2006 dated 15/3/2006 may be set aside and the petitioner may be permitted to summon the said witness - Postmaster of Edakkad Post Office, Calicut-5 to produce the documents and give

evidence. The learned Magistrate appears to have considered the prayer for summoning the defence witness in the order dated 15/3/2006. I have gone through the reasons. I am satisfied that the said order does not, at any rate, warrant interference by invoking the jurisdiction under Section 482 Cr.P.C. The right of the petitioner to take up all contentions including his right to challenge the order in CMP.No.1227/2006 in a regularly instituted appeal after final disposal of S.T.No.1145/2005 can be reserved.

3. I am satisfied in these circumstances that this Crl.M.C can be disposed of with appropriate directions.

4. In the result:

a) This Crl.M.C is allowed in part.

b) The petitioner shall be given an opportunity to examine herself as the witness on the next date of posting along with other witnesses, if any, who should be produced by the petitioner after giving sufficient prior notice to the respondent/complainant.

5. The fact that this Crl.M.C is allowed only in part will not in any way fetter the rights of the petitioner to raise all contentions before the learned Magistrate and to assail the order in CMP No.1227/2006 along with the final decision in the case. The learned counsel for the respondent submits that the matter is being dragged

down unnecessarily. It is made clear that the learned Magistrate must dispose of the case, as expeditiously as possible - at any rate, within a period of one month from the next date of posting.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006